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SAUGET / CLAYTON Chemical Co.
ILD 066918327

IN THE CIRCUIT COURT FOR THE TWENTIETH JUDICIAL CIRCUIT
ST. CLAIR COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
)
Plaintiff,)
)
vs.)
)
CLAYTON CHEMICAL COMPANY,)
)
Defendant.)

No. 93-CH-155

FILED
JAN 19 1995
CLAYTON

CONSENT ORDER

This action was commenced on behalf of the People of State of Illinois, by Roland W. Burris, Attorney General of the State of Illinois, on his own motion and at the request of the Illinois Environmental Protection Agency. The plaintiff and defendant, Clayton Chemical Company, have agreed to the making of this Consent Order. These stipulated facts shall be the findings of fact by this court and the conclusions herein shall be the conclusions of law by this court.

I.

STIPULATION OF USE AND AUTHORIZATION

The parties stipulate that this Consent Order is entered into for the purposes of settlement only, and that neither the fact that a party has entered into this Consent Order nor any of the facts stipulated herein shall be used for any purpose in this or any other proceeding except to enforce the terms hereof by the parties to the agreement. The undersigned representative for each party certifies that he is fully authorized by the party whom he represents to enter into the terms and conditions of this

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Consent Order and to bind legally the party he represents to the Consent Order.

II.

STATEMENT OF FACTS

1. The Attorney General of the State of Illinois brings this action on his own motion, as well as at the request of the Illinois Environmental Protection Agency (the "Agency"), pursuant to the statutory authority vested in him under section 42 of the Illinois Environmental Protection Act ("the Act") (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1042; 415 ILCS 5/42 (West 1992)).

2. The Agency is an agency of the State of Illinois created pursuant to section 4 of the Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1004; 415 ILCS 5/4 (West 1992)), which is charged inter alia, with the duty of enforcing the Act.

3. Defendant Clayton Chemical Company is a Missouri corporation and is qualified to do business in Illinois.

4. At all times relevant to this complaint, defendant has operated a facility ("the facility") located in Sauget, St. Clair County, Illinois.

III.

APPLICABILITY

This Consent Order shall apply to and be binding upon the plaintiff, the Agency, the defendant, and the defendant's successors and assigns, and all officers, agents and employees thereof. The defendant shall not raise, as a defense to any action to enforce this Consent Order, the failure of any of his

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agents, contractors, or employees to take such action as shall be required to comply with the provisions of this Consent Order.

IV.

COVERED MATTERS

This Consent Order covers all claims and alleged violations of environmental laws or regulations prior to the date of this Order contained or referred to in: 1) plaintiff's complaint; 2) any correspondence between the Attorney General or IEPA and defendant; or 3) any inspection report or notice of violation involving defendant.

Covered matters do not include:

- i) Criminal liability;
- ii) Claims based on defendant's failure to meet the requirements of this Consent Order;
- iii) Liability for future violation of state, local, federal, and common laws and/or regulations.
- iv) Corrective action, if any, at the facility and/or liability under State or Federal Superfund laws, if any.

V.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Consent Order in no way affects the responsibility of defendant to comply with any other federal, state or local regulations, including but not limited to the Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1001-1056.6; 415 ILCS 5/1-56.6 (West 1992)) and the Board's rules and regulations, 35 Ill. Adm. Code Subtitles A through H.

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VI.

VENUE

The parties agree that the venue of any action commenced in circuit court for the purposes of interpretation, implementation and enforcement of the terms and conditions of this Consent Order shall be in St. Clair County.

VII.

SEVERABILITY

It is the intent of the parties hereto that the provisions of this Consent Order shall be severable and should any provisions be declared by a court of competent jurisdiction to be unenforceable, the remaining clauses shall remain in full force and effect.

VIII.

FINAL JUDGMENT ORDER

This court, having jurisdiction over the parties and subject matter, and having considered the plaintiff's complaint and being advised in the premises, finds the following relief appropriate:

IT IS HEREBY ORDERED AND ADJUDGED:

A. PENALTY PAYMENT

1. Defendant shall pay a civil penalty of \$94,999.98. In addition, defendant shall pay stipulated penalties as set forth below if defendant fails to comply with each term set forth in the following compliance plan. In the event that a particular term is not complied with, the penalty portion allocated to that term shall be reinstated and shall be paid as set forth below.

2. The \$94,999.98 penalty shall be paid in six equal installments of \$15,833.33. The first payment shall be paid within ninety (90) days after entry of the Consent Order and the remaining payments shall be paid every ninety (90) days thereafter until completed. Each payment shall be paid by check or money order, payable to the Treasurer of the State of Illinois, for deposit in the Hazardous Waste Fund, and delivered to:

Illinois Environmental Protection Agency
Fiscal Services Section
2200 Churchill Road, P.O. Box 19276
Springfield, IL 62794-9276

A copy of the payment transmittal and check shall be simultaneously submitted to:

Environmental Control Division
Illinois Attorney General's Office
500 South Second Street
Springfield, IL 62706

The name and court number of this case and the Federal Employer Identification Number ("FEIN") of the defendant shall appear on the certified check or money order. For purposes of payment and collection, defendant may be reached at the following addresses:

Clayton Chemical Company
#1 Mobile Avenue
Sauget, Illinois 62201

The FEIN for defendant is:

43-0769916

3. In the event that any penalty installment is not paid in a timely fashion, interest shall accrue and be paid by the defendant at the rate set forth in subsection (a) of section 1003 of the Illinois Income Tax Act, pursuant to subsection 42(g) of

the Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1042((g); 415 ILCS 5/42(g) (West 1992)) commencing with the date of entry of this Consent Order.

4. In the event that defendant is required to pay a stipulated penalty, each payment shall be paid to the entity set forth in paragraph VIII.A.2 above.

5. Payment of a stipulated penalty specified below shall not relieve defendant from the obligation to perform any specified pollution prevention project listed below. In the event that payment of a stipulated penalty is required because of defendant's noncompliance, payment of that stipulated penalty shall not preclude the State from pursuing a contempt action or other enforcement action for injunctive relief for all violations resulting from the underlying misconduct. Additional relief, including injunctive relief, civil penalties, and any other financial relief authorized by the Act, may be sought for violations occurring after time frames set out in this Order have expired.

B. COMPLIANCE

1. In addition to all other authorities, the parties agree, that for a period of five (5) years following the date of entry of this agreement, the Office of the Illinois Attorney General and the Agency shall have the authority to enter the facility, without advance notice, to determine compliance with applicable regulations and with the terms of this Consent Order.

2. Defendant shall undertake each of the pollution prevention projects listed below. In the event that defendant

fails to satisfactorily comply with such a requirement, payment of a stipulated penalty shall be required and be paid within thirty (30) days of the occurrence of the noncompliance.

3. Within thirty (30) days of entry of this Consent Order, defendant shall upgrade its drum unloading procedures so that they satisfy and thereafter comply with the requirements of 35 Ill. Adm. Code ~~724.273~~ (1992). In the event that this requirement is not met, a stipulated penalty of Ten Thousand Dollars (\$10,000.00) shall be paid.

4. Attached hereto as Exhibit A is a closure plan for the drum storage areas identified in the complaint. Attached hereto as Exhibit B is a letter approving the plan, subject to certain conditions and modifications necessary to ensure the closure requirements of 35 Ill. Adm. Code 725, subpart G are met. Within thirty (30) days of entry of this Consent Order, defendant shall initiate implementation of the closure plan and then complete it in accordance with the Agency's approved letter and Agency-approved schedule. In the event that defendant does not initiate implementation of the closure plan by the deadline set forth above, a stipulated penalty of Fifteen Thousand Dollars (\$15,000.00) shall be paid. In the event that defendant does not complete the closure plan in accordance with the Agency's approval letter and Agency-approved schedule, a stipulated penalty of Fifteen Thousand Dollars (\$15,000.00) shall be paid.

5. Within one hundred twenty (120) days of entry of this Consent Order, defendant shall upgrade the secondary containment for its existing permitted drum storage areas by:

- a) maintaining all curbs, dikes and containment angles in a water tight condition;
- b) installing an additional impervious layer over the base of each area; and
- c) limiting storage so that the volume of containers does not exceed ten times the containment capacity.

In the event that this deadline is not met, a stipulated penalty of Five Thousand Dollars (\$5,000.00) shall be paid.

6. Defendant shall upgrade secondary containment for its existing tank storage areas to meet and thereafter comply with the requirements of 35 Ill. Adm. Code ~~724.293~~ (b) - (h) (1993) or remove the tanks from service and initiate closure of this area within 180 days of the date of this Order. In the event that this requirement is not met, a stipulated penalty of Five Thousand Dollars (\$5,000.00) shall be paid.

7. Within seventy-five (75) days of entry of this Consent Order, defendant shall submit to the Agency and thereafter comply with a waste analysis plan which fully satisfies the requirements of 35 Ill. Adm. Code 724. 113 (1993). In the event that this requirement is not met, a stipulated penalty of Five Thousand Dollars (\$5,000.00) shall be paid.

8. Within seventy-five (75) days of entry of this Consent Order, defendant shall submit to the Agency and thereafter comply with a quality assurance plan for all sampling and analyses performed by defendant which satisfies all of the requirements of USEPA SW 846. In the event that this requirement is not met, a

stipulated penalty of Five Thousand Dollars (\$5,000.00) shall be paid.

9. Within thirty (30) days of entry of this Consent Order, defendant shall upgrade its drum handling procedures so that they meet and thereafter comply with the requirements of 35 Ill. Adm. Code 724.273 (1993). In the event this requirement is not met, a stipulated penalty of Ten Thousand Dollars (\$10,000.00) shall be paid.

10. Within thirty (30) days of entry of this Consent Order, defendant shall increase and maintain its inspections pursuant to 35 Ill. Adm. Code ~~724.295~~ (1993) to at least once per operating day. In the event that this requirement is not met, a stipulated penalty of Five Thousand Dollars (\$5,000.00) shall be paid.

11. Within forty-five (45) days of entry of this Consent Order, defendant shall submit to the Agency and thereafter comply with a contingency plan fully satisfying the requirements of 35 Ill. Adm. Code ~~724.150-724.156~~ (1993). In the event that this requirement is not met, a stipulated penalty of Ten Thousand Dollars (\$10,000.00) shall be paid.

12. Within forty-five (45) days of entry of this Consent Order, defendant shall upgrade its handling of ignitable and reactive wastes so that it satisfies and thereafter complies with the requirements of 35 Ill. Adm. Code ~~724.147(a)~~ (1993). In the event that this requirement is not met, a stipulated penalty of Five Thousand Dollars (\$5,000.00) shall be paid.

13. a) Within thirty (30) days of entry of this Consent Order, defendant shall increase its financial

assurance for the units undergoing closure as specified in IEPA Log No. C-726 to the amount of \$300,000.00. Within one hundred twenty days of entry of this Consent Order, defendant shall increase its financial assurance for those units by one-half of the outstanding amount required by 35 Ill. Adm. Code 725.243 and within two hundred forty days of entry of this Consent Order, defendant shall increase its financial assurance for those units to the amount required by 35 Ill. Adm. Code 725.243.

- b) Defendant shall provide financial assurance in accordance with 35 Ill. Adm. Code 724.243 for the units covered by its Part B permit in accordance with the schedule set forth in that permit.

C. DISPUTE RESOLUTION

1. Any dispute regarding this Consent Order and its terms, any application, plan, record or report required thereunder, or with respect to any party's compliance herewith or any delay thereunder shall in the first instance be the subject of informal negotiations. If the plaintiff and the defendant cannot resolve the dispute in thirty (30) days, however, it shall be presented to the court for appropriate resolution upon written notice by any party (the period for negotiations may be extended by mutual agreement among the parties). It shall be the responsibility of the defendant to file the documents necessary to notify the court of the dispute, and thereafter the court shall order the parties

to file such pleadings as the court deems necessary and proper.

2. The defendant shall file any petition with the court within fifteen (15) calendar days after the informal negotiation period (or any extension) has expired.

D. FORCE MAJEURE

1. Any failure by the defendant to comply with any requirement of the Consent Order shall not be a violation if such failure is the result of actions by persons or events beyond the reasonable control of the defendant, including, but not restricted to, acts of God, acts of other parties, fires, floods, strikes, freight embargoes, or delays of contractors due to such causes.

2. When, in the opinion, of the defendant, circumstances have occurred which cause or may cause a violation of any provision of the Consent Order, the defendant shall notify the Agency in writing as soon as practicable, but not later than three (3) calendar days after the claimed occurrence. Failure to so notify the Agency shall constitute a waiver of any defense under this paragraph D arising from said circumstances.

3. If the plaintiff agrees that the violation has been or will be caused by circumstances beyond the control of the defendant, the parties may request that this court extend the time for performance hereunder for a period equal to the delay resulting from such circumstances or enter such order as is appropriate. If parties cannot agree whether the reasons for the delay or noncompliance were beyond the reasonable control of the defendant, such dispute shall be resolved pursuant to the dispute

resolutions appearing in paragraph D above. The defendant shall have the burden of going forward and proving that the circumstances alleged to be causing the delay or noncompliance were beyond its reasonable control.

4. Increased costs associated with implementing the measures required by the Consent Order shall not, by itself, excuse the defendant from a failure to comply under the provisions of this paragraph D.

E. COVENANT NOT TO SUE

In exchange for the payments and promises made by defendant herein, plaintiffs agree to covenant not to sue defendants for covered matters.

F. JURISDICTION

This court shall retain jurisdiction of this matter for the purpose of amending, interpreting, implementing and enforcing the terms and conditions of this Consent Order, and for the purpose of adjudicating all matters of dispute among the parties.

WHEREFORE, the parties, by their representative, enter into this Consent Order and submit it to the court that it may be approved and entered.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,

ROLAND W. BURRIS
ATTORNEY GENERAL

DATED: _____

BY: _____
SHAWN W. DENNEY
First Assistant Attorney General

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

DATED: 12/15/94

BY: 

Joseph E. Svoboda
General Counsel
Division of Legal Counsel

CLAYTON CHEMICAL COMPANY

DATED: 9 Jan 95

BY: 

ENTERED: 1.19.95


JUDGE

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